IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8283 OF 2004

Smt.Leelabai Maruti Patil & Ors. : Petitioners

(Orig. Defendants)

V/s.

Mr.Gopinath Kashinath Patil & Ors. : Respondents

(Orig.Deft.Nos.12 to 15)

...

Mr.Sandesh D. Patil for the petitioners.

Mr.I.R.Kulkarni for respondent nos.1 & 2.

Mr.M.H.Solkar, Asstt. Govt. Pleader for the State.

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CORAM : S.A. BOBDE, J.

March 11, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Kulkarni for respondent nos.1 and 2 and Mr.Solkar, learned Asstt. Govt. Pleader for the State, appear and waive service of rule.

Heard by consent.

2. This petition is by the defendants who have been sued by the respondents, inter alia, for the following

reliefs:-

> "a. It be declared and decreed that the suit lands are the joint tenancy lands, derived to the plaintiffs No.1 & late Shri Maruti Kashinath Patil from their father, late Shri Kashinath Chahu Patil.
>
> b. Further it be declared & decreed that the plaintiff No.1 is having the joint tenancy and co-parcenary interest, along with and equal to the rights of late Shri Maruti Kashianth Patil, and entitled for recording names of the plaintiffs to Revenue Record of suit lands."

3. The petitioners raised a preliminary objection to the jurisdiction of the Court on the ground that the Civil Court has no jurisdiction to try the question of tenancy in view of section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as the "Act", which reads as follows:-

"85. (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

Explanation.-- For the purposes of this section a Civil Court shall include a Mamlatdars' Court constituted under the Mamlatdars' Courts Act, 1906."

4. According to the petitioners, the power to decide the question whether a person is or not a tenant is conferred on the Mamlatdar under section 70 which, to the extent it is relevant, reads as follows:-

> "70. For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar:-
> (a) .....
>
> (b) to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant."

The trial Court rejected the application on the ground that the respondents are not claiming any tenancy rights under the Tenancy Act but they are merely claiming half-share in the suit property. The trial Court has further observed that no issue of tenancy is involved.

5. Having heard the learned counsel for both the sides, I am of view that the trial Court has committed an error of law apparent on the face of the record. Undoubtedly, the respondents have sought a declaration that they are joint tenants of agricultural lands which they derived from

their father. Mr.Kulkarni, learned counsel for respondent nos.1 and 2, submits that the respondents have only sought a declaration that they derive joint tenancy from their father. Even if this contention is accepted, it is obvious that it may become necessary for the Court to decide the question whether the respondents' father was a tenant. It is clear that in this case, it would be necessary to do so in view of the petitioners' contention that they are the true tenants of the land in question. In this view of the matter, the trial Court has passed the order which is not sustainable in law. The issue of tenancy would have to be decided by the Mamlatdar under the provisions of the Act and not by the Civil Court, in view of the bar of section 85. The trial Court shall refer the question for decision, in accordance with section 85. Needless to say that any other issue which is not required to be decided under the Act will be decided by the civil Court.

6. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.